

1 AN ACT
2 RELATING TO PROFESSIONAL LICENSING; CREATING THE
3 POLYSOMNOGRAPHY PRACTICE ACT; PROVIDING LICENSING
4 REQUIREMENTS FOR POLYSOMNOGRAPHIC TECHNOLOGISTS; GIVING
5 DUTIES TO THE NEW MEXICO MEDICAL BOARD; CREATING CRIMINAL AND
6 CIVIL PENALTIES; MAKING AN APPROPRIATION.

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

9 Section 1. A new section of the Medical Practice Act is
10 enacted to read:

11 "SHORT TITLE.--Sections 1 through 10 of this act may be
12 cited as the "Polysomnography Practice Act"."

13 Section 2. A new section of the Medical Practice Act is
14 enacted to read:

15 "DEFINITIONS.--As used in the Polysomnography Practice
16 Act:

17 A. "board" means the New Mexico medical board;

18 B. "committee" means the polysomnography practice
19 advisory committee;

20 C. "direct supervision" means that the
21 polysomnographic technologist providing supervision shall be
22 present in the area where the polysomnographic procedure is
23 being performed and immediately available to furnish
24 assistance and direction throughout the performance of the
25 procedure;

1 D. "general supervision" means that the
2 polysomnographic procedure is provided under a physician's
3 direction and control, but the physician's presence is not
4 required during the performance of the procedure;

5 E. "license" means an authorization issued by the
6 board that permits a person to engage in the practice of
7 polysomnography in the state;

8 F. "licensed provider" means a licensed physician,
9 licensed physician assistant, licensed certified nurse
10 practitioner or licensed psychologist;

11 G. "licensee" means a person licensed by the board
12 to engage in the practice of polysomnography;

13 H. "polysomnographic student" means a person who
14 is enrolled in an educational program that is accredited by
15 the commission on accreditation of allied health education
16 programs, as provided in Section 5 of the Polysomnography
17 Practice Act, and who may provide sleep-related services
18 under the direct supervision of a polysomnographic
19 technologist as a part of the person's educational program;

20 I. "polysomnographic technician" means a person
21 who has graduated from an accredited educational program
22 described in Section 5 of the Polysomnography Practice Act
23 but has not yet passed the national certifying examination
24 given by the board of registered polysomnographic
25 technologists, who has obtained a temporary permit from the

1 board and who may provide sleep-related services under the
2 general supervision of a licensed physician;

3 J. "polysomnographic technologist" means a person
4 who is credentialed by the board of registered
5 polysomnographic technologists and is licensed by the board
6 to engage in the practice of polysomnography under the
7 general supervision of a licensed physician;

8 K. "polysomnographic trainee" means a person who
9 is enrolled in an accredited sleep technologist educational
10 program that is accredited by the American academy of sleep
11 medicine and who may provide sleep-related services under the
12 direct supervision of a polysomnographic technologist as a
13 part of the person's educational program;

14 L. "practice of polysomnography" means the
15 performance of diagnostic and therapeutic tasks, under the
16 general supervision of a licensed physician, including:

17 (1) monitoring and recording physiologic
18 activity and data during the evaluation or treatment of
19 sleep-related disorders, including sleep-related respiratory
20 disturbances, by applying appropriate techniques, equipment
21 and procedures, including:

22 (a) continuous or bi-level positive
23 airway pressure titration on patients using a nasal or oral
24 or a nasal and oral mask or appliance that does not extend
25 into the trachea or attach to an artificial airway, including

1 the fitting and selection of a mask or appliance and the
2 selection and implementation of treatment settings;

3 (b) supplemental low-flow oxygen
4 therapy that is less than ten liters per minute using nasal
5 cannula or continuous or bi-level positive airway pressure
6 during a polysomnogram;

7 (c) capnography during a polysomnogram;

8 (d) cardiopulmonary resuscitation;

9 (e) pulse oximetry;

10 (f) gastroesophageal pH monitoring;

11 (g) esophageal pressure monitoring;

12 (h) sleep staging, including surface
13 electroencephalography, surface electrooculography and
14 surface submental electromyography;

15 (i) surface electromyography;

16 (j) electrocardiography;

17 (k) respiratory effort monitoring,
18 including thoracic and abdominal movement;

19 (l) respiratory plethysmography;

20 (m) arterial tonometry and additional
21 measures of autonomic nervous system tone;

22 (n) snore monitoring;

23 (o) audio or video monitoring;

24 (p) body movement monitoring;

25 (q) nocturnal penile tumescence

1 monitoring;

2 (r) nasal and oral airflow monitoring;

3 (s) body temperature monitoring; and

4 (t) use of additional sleep-related
5 diagnostic technologies as determined by a rule adopted by
6 the board;

7 (2) observing and monitoring physical signs
8 and symptoms, general behavior and general physical response
9 to polysomnographic evaluation or treatment and determining
10 whether initiation, modification or discontinuation of a
11 treatment regimen is warranted;

12 (3) analyzing and scoring data collected
13 during the monitoring described in Paragraphs (1) and (2) of
14 this subsection for the purpose of assisting a licensed
15 provider in the diagnosis and treatment of sleep and wake
16 disorders that result from developmental defects, the aging
17 process, physical injury, disease or actual or anticipated
18 somatic dysfunction;

19 (4) implementing a written or verbal order
20 from a licensed provider that requires the practice of
21 polysomnography;

22 (5) educating a patient regarding the
23 treatment regimen that assists that patient in improving the
24 patient's sleep; and

25 (6) initiating and monitoring treatment,

1 under the orders of a licensed provider, for sleep-related
2 breathing disorders by providing continuous positive airway
3 pressure and bi-level positive airway pressure devices and
4 accessories, including masks that do not extend into the
5 trachea or attach to an artificial airway, to a patient for
6 home use, together with educating the patient about the
7 treatment and managing the treatment; and

8 M. "sleep-related services" means acts performed
9 by polysomnographic technicians, polysomnographic trainees,
10 polysomnographic students and other persons permitted to
11 perform these services under the Polysomnography Practice
12 Act, in a setting described in Subsection D of Section 4 of
13 the Polysomnography Practice Act, that would be considered
14 the practice of polysomnography if performed by a
15 polysomnographic technologist."

16 Section 3. A new section of the Medical Practice Act is
17 enacted to read:

18 "LICENSE REQUIRED--EXCEPTIONS--PRACTICE LIMITATIONS--
19 APPLICABILITY.--

20 A. On and after July 1, 2010, a person who is
21 engaged in the practice of polysomnography must have a valid
22 polysomnographic technologist license issued by the board.
23 It shall be unlawful for a person to engage in the practice
24 of polysomnography after that date unless the person has a
25 valid polysomnographic technologist license issued by the

1 board.

2 B. Prior to July 1, 2010, any person who is
3 engaged in the practice of polysomnography without being
4 licensed under the Polysomnography Practice Act shall not be
5 deemed to be in violation of that act."

6 Section 4. A new section of the Medical Practice Act is
7 enacted to read:

8 "EXEMPTIONS.--

9 A. The following classes of persons may provide
10 sleep-related services without being licensed as a
11 polysomnographic technologist:

12 (1) a polysomnographic technician under the
13 general supervision of a licensed physician for no more than
14 two years from the date of the person's graduation from one
15 of the accredited programs described in Section 5 of the
16 Polysomnography Practice Act; provided that the board may
17 grant a one-time extension of up to one year beyond the
18 original two-year period;

19 (2) a polysomnographic trainee who may
20 provide sleep-related services under the direct supervision
21 of a polysomnographic technologist as a part of the trainee's
22 educational program while actively enrolled in an accredited
23 sleep technologist educational program that is accredited by
24 the American academy of sleep medicine;

25 (3) a polysomnographic student who may

1 provide uncompensated sleep-related services under the direct
2 supervision of a polysomnographic technologist as a part of
3 the student's educational program while actively enrolled in
4 a polysomnographic educational program that is accredited by
5 the commission on accreditation of allied health education
6 programs; and

7 (4) a person, other than a respiratory care
8 practitioner licensed under the Respiratory Care Act,
9 credentialed in one of the health-related fields accepted by
10 the board of registered polysomnographic technologists, who
11 may provide sleep-related services under the direct
12 supervision of a polysomnographic technologist for a period
13 of up to one year while obtaining the clinical experience
14 necessary to be eligible to take the examination given by the
15 board of registered polysomnographic technologists.

16 B. Before providing any sleep-related services:

17 (1) a polysomnographic technician shall
18 obtain a temporary permit from the board and when providing
19 services shall wear a badge that appropriately identifies the
20 person as a polysomnographic technician;

21 (2) a polysomnographic trainee shall give
22 notice to the board that the trainee is enrolled in an
23 accredited sleep technologist educational program accredited
24 by the American academy of sleep medicine. When providing
25 services, the trainee shall wear a badge that appropriately

1 identifies the person as a polysomnographic trainee;

2 (3) a person who is obtaining clinical
3 experience pursuant to Paragraph (4) of Subsection A of this
4 section shall give notice to the board that the person is
5 working under the direct supervision of a polysomnographic
6 technologist in order to gain the experience to be eligible
7 to take the examination given by the board of registered
8 polysomnographic technologists. When providing services, the
9 person shall wear a badge that appropriately identifies that
10 the person is obtaining clinical experience; and

11 (4) a polysomnographic student shall wear a
12 badge that appropriately identifies the person as a
13 polysomnographic student.

14 C. A licensed dentist shall make or direct the
15 making and use of any oral appliance used in the practice of
16 polysomnography and shall evaluate the structures of a
17 patient's oral and maxillofacial region for purposes of
18 fitting the appliance.

19 D. The practice of polysomnography shall take
20 place only in a hospital, a stand-alone sleep laboratory or
21 sleep center or in a patient's home in accordance with a
22 licensed provider's order; provided that the scoring of data
23 and the education of patients may take place in settings
24 other than in a hospital, sleep laboratory, sleep center or
25 patient's home.

1 E. The Polysomnography Practice Act shall not
2 apply to:

3 (1) a physician licensed under the Medical
4 Practice Act;

5 (2) diagnostic electroencephalograms
6 conducted in accordance with the guidelines of the American
7 clinical neurophysiology society;

8 (3) a person who is employed in the practice
9 of polysomnography by a federal government facility or agency
10 in New Mexico; or

11 (4) a person qualified as a member of a
12 recognized profession, the practice of which requires a
13 license or is regulated pursuant to the laws of New Mexico,
14 who renders services within the scope of the person's license
15 or other regulatory authority; provided that the person does
16 not represent that the person is a polysomnographic
17 technologist."

18 Section 5. A new section of the Medical Practice Act is
19 enacted to read:

20 "REQUIREMENTS FOR LICENSING.--

21 A. The board shall grant a license to engage in
22 the practice of polysomnography to a person who has submitted
23 to the board:

24 (1) a completed application for licensing on
25 the form provided by the board;

1 (2) required documentation as determined by
2 the board;

3 (3) the required fees;

4 (4) an affidavit stating that the applicant
5 has not been found guilty of unprofessional conduct or
6 incompetence;

7 (5) satisfactory documentation of either:

8 (a) graduation from a polysomnographic
9 educational program that is accredited by the commission on
10 accreditation of allied health education programs;

11 (b) graduation from a respiratory care
12 educational program that is accredited by the commission on
13 accreditation of allied health education programs and
14 completion of the curriculum for a polysomnography
15 certificate established and accredited by the committee on
16 accreditation for respiratory care of the commission on
17 accreditation of allied health education programs;

18 (c) graduation from an
19 electroneurodiagnostic technologist educational program with
20 a polysomnographic technology track that is accredited by the
21 commission on accreditation of allied health education
22 programs; or

23 (d) successful completion of an
24 accredited sleep technologist educational program that is
25 accredited by the American academy of sleep medicine;

1 provided, however, this optional requirement shall not be
2 available after the date on which there are at least three
3 polysomnographic technologist educational programs in New
4 Mexico that have been accredited by the commission on
5 accreditation of allied health education programs for at
6 least the two years immediately preceding that date; and

7 (6) satisfactory documentation of having:

8 (a) passed the national certifying
9 examination given by the board of registered polysomnographic
10 technologists or having passed a national certifying
11 examination equivalent to the board of registered
12 polysomnographic technologists' examination as determined by
13 a rule adopted by the New Mexico medical board;

14 (b) been credentialed by the board of
15 registered polysomnographic technologists or by another
16 national entity equivalent to the board of polysomnographic
17 technologists as determined by rule adopted by the New Mexico
18 medical board;

19 (c) met any additional educational or
20 clinical requirements established by the board pursuant to
21 rule; and

22 (d) met all other requirements of the
23 Polysomnography Practice Act.

24 B. A person who is engaged in the practice of
25 polysomnography on July 1, 2008 shall be eligible for a

1 license under the Polysomnography Practice Act without
2 meeting the educational requirement of Paragraph (5) of
3 Subsection A of this section, provided that the person meets
4 the requirements of Paragraph (6) of Subsection A of this
5 section.

6 C. The board may require:

7 (1) a personal interview with an applicant
8 to evaluate that person's qualifications for a license; and

9 (2) fingerprints and other information
10 necessary for a state and national criminal background
11 check."

12 Section 6. A new section of the Medical Practice Act is
13 enacted to read:

14 "LICENSE RENEWAL.--

15 A. A licensee shall renew the licensee's
16 polysomnographic technologist's license biennially by
17 submitting prior to the date established by the board:

18 (1) the completed application for license
19 renewal on the form provided by the board; and

20 (2) the required fee for biennial license
21 renewal.

22 B. The board may require proof of continuing
23 education or other proof of competence as a requirement for
24 renewal.

25 C. A sixty-day grace period shall be allowed a

1 licensee after the end of the licensing period, during which
2 time the license may be renewed by submitting:

3 (1) the completed application for license
4 renewal on the form provided by the board;

5 (2) the required fee for biennial license
6 renewal; and

7 (3) the required late fee.

8 D. A polysomnographic technologist's license not
9 renewed at the end of the grace period shall be considered
10 expired, and the licensee shall not be eligible to practice
11 within the state. For reinstatement of an expired license
12 within one year of the date of renewal, the board shall
13 establish requirements or fees that are in addition to the
14 fee for biennial license renewal and may require the former
15 licensee to reapply as a new applicant."

16 Section 7. A new section of the Medical Practice Act is
17 enacted to read:

18 "~~LICENSE--CONTENTS--DISPLAY--FEES.--~~

19 A. A license issued by the board shall contain the
20 name of the person to whom it is issued, the date and number
21 of the license and other information the board may require.

22 B. The most recent address contained in the
23 board's records for each licensee is the address deemed
24 sufficient for purposes of service of process and
25 correspondence and notice from the board. Any licensee whose

1 address changes shall, within thirty days of the change,
2 notify the board of the address change.

3 C. A licensee who wishes to retire from the
4 practice of polysomnography shall file with the board an
5 affidavit, in a form to be furnished by the board, stating
6 the date on which the person retired from practice and other
7 information the board may require. If that person wishes to
8 reenter the practice of polysomnography, the person shall
9 meet requirements established by the board for license
10 renewal.

11 D. A licensee shall display the license in the
12 office or place in which the licensee practices in a location
13 clearly visible to patients.

14 E. The board shall establish license and
15 administrative fees, but no individual fee shall exceed five
16 hundred dollars (\$500)."

17 Section 8. A new section of the Medical Practice Act is
18 enacted to read:

19 "COMMITTEE--CREATION--ORGANIZATION--PER DIEM AND
20 MILEAGE--REMOVAL.--

21 A. The "polysomnography practice advisory
22 committee" is created to advise the board on all matters
23 related to the Polysomnography Practice Act. The board shall
24 provide administrative and financial support to the
25 committee.

1 B. The committee shall have five members, who are
2 residents of New Mexico, appointed by the board as follows:

3 (1) two members who are credentialed by the
4 board of registered polysomnographic technologists; provided
5 that when the New Mexico medical board begins issuing
6 licenses, this category of committee members shall be three
7 licensed polysomnographic technologists, with the
8 then-sitting members in this category being given a
9 reasonable amount of time to become licensed;

10 (2) one licensed physician who is certified
11 in sleep medicine by a national certifying body recognized by
12 the American academy of sleep medicine;

13 (3) one person whose background is at the
14 discretion of the board; and

15 (4) one member of the public who is not
16 economically or professionally associated with the health
17 care field.

18 C. Term-length conditions for appointments to the
19 committee are:

20 (1) for initial appointments, two members
21 each for four-year, three-year and two-year terms and one
22 member for a one-year term;

23 (2) for regular appointments after the
24 initial appointments, four-year terms;

25 (3) for a vacancy appointment, the balance

1 of the term; and

2 (4) for any one member, no more than two
3 terms, including an initial appointment term; provided that a
4 member shall continue to serve on the committee until a
5 replacement is appointed.

6 D. The committee shall elect annually a
7 chairperson and other officers as the committee determines to
8 be necessary.

9 E. The committee shall meet at least twice per
10 calendar year and otherwise as often as necessary to conduct
11 business, with four members constituting a quorum and
12 meetings subject to the Open Meetings Act.

13 F. Members of the committee shall be reimbursed as
14 nonsalaried public officers pursuant to the Per Diem and
15 Mileage Act, and members shall receive no other compensation,
16 perquisite or allowance for their service on the committee.

17 G. The board may remove from office a member of
18 the committee for neglect of duties required by the
19 Polysomnography Practice Act, malfeasance in office,
20 incompetence or unprofessional conduct."

21 Section 9. A new section of the Medical Practice Act is
22 enacted to read:

23 "BOARD--COMMITTEE--POWERS AND DUTIES.--

24 A. The board, with the advice of the committee,
25 shall have powers regarding licensing of polysomnographic

1 technologists, temporary permitting of polysomnographic
2 technicians, approval of polysomnography curricula, approval
3 of degree programs in polysomnography and any other matters
4 that are necessary to ensure the training and licensing of
5 competent polysomnographic technologists.

6 B. The board, with the advice of the committee,
7 shall hold hearings and adopt rules regarding:

8 (1) the licensing of polysomnographic
9 technologists, the practice of polysomnography and the
10 minimum qualifications and hours of clinical experience and
11 standards of care required for being licensed as a
12 polysomnographic technologist;

13 (2) criteria for continuing education
14 requirements;

15 (3) the manner in which records of
16 examinations and treatments shall be kept and maintained;

17 (4) professional conduct, ethics and
18 responsibility;

19 (5) disciplinary actions, including the
20 denial, suspension or revocation of or the imposition of
21 restrictions or conditions on a license, and the
22 circumstances that require disciplinary action;

23 (6) a means to provide information to all
24 polysomnographic technologists licensed in the state;

25 (7) the inspection of the business premises

1 of a licensee when the board determines that an inspection is
2 necessary;

3 (8) the investigation of complaints against
4 licensees or persons holding themselves out as engaging in
5 the practice of polysomnography in the state;

6 (9) the publication of information for the
7 public about licensees and the practice of polysomnography in
8 the state;

9 (10) an orderly process for reinstatement of
10 a license;

11 (11) criteria for acceptance of
12 polysomnography credentials or licenses issued in other
13 jurisdictions;

14 (12) criteria for advertising or promotional
15 materials; and

16 (13) any matter necessary to implement the
17 Polysomnography Practice Act."

18 Section 10. A new section of the Medical Practice Act
19 is enacted to read:

20 "OFFENSES--CRIMINAL PENALTIES.--A person who engages in
21 the practice of polysomnography without a license is guilty
22 of a misdemeanor and shall be sentenced in accordance with
23 the provisions of Section 31-19-1 NMSA 1978."

24 Section 11. Section 61-6-5 NMSA 1978 (being Laws 1973,
25 Chapter 361, Section 2, as amended) is amended to read:

1 "61-6-5. DUTIES AND POWERS.--The board shall:

2 A. enforce and administer the provisions of the
3 Medical Practice Act, the Physician Assistant Act, the
4 Anesthesiologist Assistants Act, the Impaired Health Care
5 Provider Act and the Polysomnography Practice Act;

6 B. adopt, publish and file, in accordance with the
7 Uniform Licensing Act and the State Rules Act, all rules for
8 the implementation and enforcement of the provisions of the
9 Medical Practice Act, the Physician Assistant Act, the
10 Anesthesiologist Assistants Act, the Impaired Health Care
11 Provider Act and the Polysomnography Practice Act;

12 C. adopt and use a seal;

13 D. administer oaths to all applicants, witnesses
14 and others appearing before the board, as appropriate;

15 E. take testimony on matters within the board's
16 jurisdiction;

17 F. keep an accurate record of all its meetings,
18 receipts and disbursements;

19 G. maintain records in which the name, address and
20 license number of all licensees shall be recorded, together
21 with a record of all license renewals, suspensions,
22 revocations, probations, stipulations, censures, reprimands
23 and fines;

24 H. grant, deny, review, suspend and revoke
25 licenses to practice medicine and censure, reprimand, fine

1 and place on probation and stipulation licensees and
2 applicants in accordance with the Uniform Licensing Act for
3 any cause stated in the Medical Practice Act and the Impaired
4 Health Care Provider Act;

5 I. hire staff and administrators as necessary to
6 carry out the provisions of the Medical Practice Act;

7 J. have the authority to hire or contract with
8 investigators to investigate possible violations of the
9 Medical Practice Act;

10 K. have the authority to hire a competent attorney
11 to give advice and counsel in regard to any matter connected
12 with the duties of the board, to represent the board in any
13 legal proceedings and to aid in the enforcement of the laws
14 in relation to the medical profession and to fix the
15 compensation to be paid to such attorney; provided, however,
16 that such attorney shall be compensated from the funds of the
17 board;

18 L. establish continuing medical education
19 requirements for licensed physicians and continuing education
20 requirements for physician assistants;

21 M. establish committees as it deems necessary for
22 carrying on its business;

23 N. hire or contract with a licensed physician to
24 serve as medical director and fulfill specified duties of the
25 secretary-treasurer; and

1 O. establish and maintain rules related to the
2 management of pain based on review of national standards for
3 pain management."

4 Section 12. Section 61-6-6 NMSA 1978 (being Laws 1973,
5 Chapter 361, Section 1, as amended) is amended to read:

6 "61-6-6. DEFINITIONS.--As used in Chapter 61, Article 6
7 NMSA 1978:

8 A. "approved postgraduate training program" means
9 a program approved by the accrediting council on graduate
10 medical education of the American medical association or by
11 the board;

12 B. "board" means the New Mexico medical board;

13 C. "licensed physician" means a medical doctor
14 licensed under the Medical Practice Act to practice medicine
15 in New Mexico;

16 D. "licensee" means a medical doctor, physician
17 assistant, polysomnographic technologist or anesthesiologist
18 assistant licensed by the board to practice in New Mexico;

19 E. "medical college or school in good standing"
20 means a board-approved medical college or school that has as
21 high a standard as that required by the association of
22 American medical colleges and the council on medical
23 education of the American medical association;

24 F. "medical student" means a student enrolled in a
25 board-approved medical college or school in good standing;

1 G. "physician assistant" means a health
2 professional who is licensed by the board to practice as a
3 physician assistant and who provides services to patients
4 under the supervision and direction of a licensed physician;

5 H. "intern" means a first-year postgraduate
6 student upon whom a degree of doctor of medicine and surgery
7 or equivalent degree has been conferred by a medical college
8 or school in good standing;

9 I. "resident" means a graduate of a medical
10 college or school in good standing who is in training in a
11 board-approved and accredited residency training program in a
12 hospital or facility affiliated with an approved hospital and
13 who has been appointed to the position of "resident" or
14 "fellow" for the purpose of postgraduate medical training;

15 J. "the practice of medicine" consists of:

16 (1) advertising, holding out to the public
17 or representing in any manner that one is authorized to
18 practice medicine in this state;

19 (2) offering or undertaking to administer,
20 dispense or prescribe a drug or medicine for the use of
21 another person, except as authorized pursuant to a
22 professional or occupational licensing statute set forth in
23 Chapter 61 NMSA 1978;

24 (3) offering or undertaking to give or
25 administer, dispense or prescribe a drug or medicine for the

1 use of another person, except as directed by a licensed
2 physician;

3 (4) offering or undertaking to perform an
4 operation or procedure upon a person;

5 (5) offering or undertaking to diagnose,
6 correct or treat in any manner or by any means, methods,
7 devices or instrumentalities any disease, illness, pain,
8 wound, fracture, infirmity, deformity, defect or abnormal
9 physical or mental condition of a person;

10 (6) offering medical peer review,
11 utilization review or diagnostic service of any kind that
12 directly influences patient care, except as authorized
13 pursuant to a professional or occupational licensing statute
14 set forth in Chapter 61 NMSA 1978; or

15 (7) acting as the representative or agent of
16 a person in doing any of the things listed in this
17 subsection;

18 K. "the practice of medicine across state lines"
19 means:

20 (1) the rendering of a written or otherwise
21 documented medical opinion concerning diagnosis or treatment
22 of a patient within this state by a physician located outside
23 this state as a result of transmission of individual patient
24 data by electronic, telephonic or other means from within
25 this state to the physician or the physician's agent; or

1 (2) the rendering of treatment to a patient
2 within this state by a physician located outside this state
3 as a result of transmission of individual patient data by
4 electronic, telephonic or other means from within this state
5 to the physician or the physician's agent;

6 L. "sexual contact" means touching the primary
7 genital area, groin, anus, buttocks or breast of a patient or
8 allowing a patient to touch another's primary genital area,
9 groin, anus, buttocks or breast in a manner that is commonly
10 recognized as outside the scope of acceptable medical
11 practice;

12 M. "sexual penetration" means sexual intercourse,
13 cunnilingus, fellatio or anal intercourse, whether or not
14 there is any emission, or introducing any object into the
15 genital or anal openings of another in a manner that is
16 commonly recognized as outside the scope of acceptable
17 medical practice; and

18 N. "United States" means the fifty states, its
19 territories and possessions and the District of Columbia."

20 Section 13. Section 61-6-15 NMSA 1978 (being Laws 1969,
21 Chapter 46, Section 6, as amended) is amended to read:

22 "61-6-15. LICENSE MAY BE REFUSED, REVOKED OR
23 SUSPENDED--LICENSEE MAY BE FINED, CENSURED OR REPRIMANDED--
24 PROCEDURE--PRACTICE AFTER SUSPENSION OR REVOCATION--PENALTY--
25 UNPROFESSIONAL AND DISHONORABLE CONDUCT DEFINED--FEES AND

1 EXPENSES.--

2 A. The board may refuse to license and may revoke
3 or suspend a license that has been issued by the board or a
4 previous board and may fine, censure or reprimand a licensee
5 upon satisfactory proof being made to the board that the
6 applicant for or holder of the license has been guilty of
7 unprofessional or dishonorable conduct. The board may also
8 refuse to license an applicant who is unable to practice
9 medicine, practice as a physician assistant or an
10 anesthesiologist assistant or engage in the practice of
11 polysomnography, pursuant to Section 61-7-3 NMSA 1978. All
12 proceedings shall be as required by the Uniform Licensing Act
13 or the Impaired Health Care Provider Act.

14 B. The board may, in its discretion and for good
15 cause shown, place the licensee on probation on the terms and
16 conditions it deems proper for protection of the public, for
17 the purpose of rehabilitation of the probationer or both.
18 Upon expiration of the term of probation, if a term is set,
19 further proceedings may be abated by the board if the holder
20 of the license furnishes the board with evidence that the
21 licensee is competent to practice, is of good moral character
22 and has complied with the terms of probation.

23 C. If evidence fails to establish to the
24 satisfaction of the board that the licensee is competent and
25 is of good moral character or if evidence shows that the

1 licensee has not complied with the terms of probation, the
2 board may revoke or suspend the license. If a license to
3 practice in this state is suspended, the holder of the
4 license may not practice during the term of suspension. A
5 person whose license has been revoked or suspended by the
6 board and who thereafter practices or attempts or offers to
7 practice in New Mexico, unless the period of suspension has
8 expired or been modified by the board or the license
9 reinstated, is guilty of a felony and shall be punished as
10 provided in Section 61-6-20 NMSA 1978.

11 D. "Unprofessional or dishonorable conduct", as
12 used in this section, means, but is not limited to because of
13 enumeration, conduct of a licensee that includes the
14 following:

15 (1) procuring, aiding or abetting a criminal
16 abortion;

17 (2) employing a person to solicit patients
18 for the licensee;

19 (3) representing to a patient that a
20 manifestly incurable condition of sickness, disease or injury
21 can be cured;

22 (4) obtaining a fee by fraud or
23 misrepresentation;

24 (5) willfully or negligently divulging a
25 professional confidence;

1 (6) conviction of an offense punishable by
2 incarceration in a state penitentiary or federal prison or
3 conviction of a misdemeanor associated with the practice of
4 the licensee. A copy of the record of conviction, certified
5 by the clerk of the court entering the conviction, is
6 conclusive evidence;

7 (7) habitual or excessive use of intoxicants
8 or drugs;

9 (8) fraud or misrepresentation in applying
10 for or procuring a license to practice in this state or in
11 connection with applying for or procuring renewal, including
12 cheating on or attempting to subvert the licensing
13 examinations;

14 (9) making false or misleading statements
15 regarding the skill of the licensee or the efficacy or value
16 of the medicine, treatment or remedy prescribed or
17 administered by the licensee or at the direction of the
18 licensee in the treatment of a disease or other condition of
19 the human body or mind;

20 (10) impersonating another licensee,
21 permitting or allowing a person to use the license of the
22 licensee or practicing as a licensee under a false or assumed
23 name;

24 (11) aiding or abetting the practice of a
25 person not licensed by the board;

1 (12) gross negligence in the practice of a
2 licensee;

3 (13) manifest incapacity or incompetence to
4 practice as a licensee;

5 (14) discipline imposed on a licensee by
6 another state, including denial, probation, suspension or
7 revocation, based upon acts by the licensee similar to acts
8 described in this section. A certified copy of the record of
9 suspension or revocation of the state making the suspension
10 or revocation is conclusive evidence;

11 (15) the use of a false, fraudulent or
12 deceptive statement in a document connected with the practice
13 of a licensee;

14 (16) fee splitting;

15 (17) the prescribing, administering or
16 dispensing of narcotic, stimulant or hypnotic drugs for other
17 than accepted therapeutic purposes;

18 (18) conduct likely to deceive, defraud or
19 harm the public;

20 (19) repeated similar negligent acts;

21 (20) employing abusive billing practices;

22 (21) failure to report to the board any
23 adverse action taken against the licensee by:

24 (a) another licensing jurisdiction;

25 (b) a peer review body;

- 1 (c) a health care entity;
2 (d) a professional or medical society
3 or association;
4 (e) a governmental agency;
5 (f) a law enforcement agency; or
6 (g) a court for acts or conduct similar
7 to acts or conduct that would constitute grounds for action
8 as defined in this section;

9 (22) failure to report to the board
10 surrender of a license or other authorization to practice in
11 another state or jurisdiction or surrender of membership on
12 any medical staff or in any medical or professional
13 association or society following, in lieu of and while under
14 disciplinary investigation by any of those authorities or
15 bodies for acts or conduct similar to acts or conduct that
16 would constitute grounds for action as defined in this
17 section;

18 (23) failure to furnish the board, its
19 investigators or representatives with information requested
20 by the board;

21 (24) abandonment of patients;

22 (25) being found mentally incompetent or
23 insane by a court of competent jurisdiction;

24 (26) injudicious prescribing, administering
25 or dispensing of a drug or medicine;

1 (27) failure to adequately supervise, as
2 provided by board rule, a medical or surgical assistant or
3 technician or professional licensee who renders health care;

4 (28) sexual contact with a patient or person
5 who has authority to make medical decisions for a patient,
6 other than the spouse of the licensee;

7 (29) conduct unbecoming in a person licensed
8 to practice or detrimental to the best interests of the
9 public;

10 (30) the surrender of a license or
11 withdrawal of an application for a license before another
12 state licensing board while an investigation or disciplinary
13 action is pending before that board for acts or conduct
14 similar to acts or conduct that would constitute grounds for
15 action pursuant to this section;

16 (31) sexual contact with a former mental
17 health patient of the licensee, other than the spouse of the
18 licensee, within one year from the end of treatment;

19 (32) sexual contact with a patient when the
20 licensee uses or exploits treatment, knowledge, emotions or
21 influence derived from the previous professional
22 relationship;

23 (33) improper management of medical records,
24 including failure to maintain timely, accurate, legible and
25 complete medical records;

1 (34) failure to provide pertinent and
2 necessary medical records to a physician or patient of the
3 physician in a timely manner when legally requested to do so
4 by the patient or by a legally designated representative of
5 the patient;

6 (35) undertreatment of pain as provided by
7 board rule;

8 (36) interaction with physicians, hospital
9 personnel, patients, family members or others that interferes
10 with patient care or could reasonably be expected to
11 adversely impact the quality of care rendered to a patient;

12 (37) soliciting or receiving compensation by
13 a physician assistant or anesthesiologist assistant from a
14 person who is not an employer of the assistant; or

15 (38) willfully or negligently divulging
16 privileged information or a professional secret.

17 E. As used in this section, "fee splitting"
18 includes offering, delivering, receiving or accepting any
19 unearned rebate, refunds, commission preference, patronage
20 dividend, discount or other unearned consideration, whether
21 in the form of money or otherwise, as compensation or
22 inducement for referring patients, clients or customers to a
23 person, irrespective of any membership, proprietary interest
24 or co-ownership in or with a person to whom the patients,
25 clients or customers are referred.

1 F. Licensees whose licenses are in a probationary
2 status shall pay reasonable expenses for maintaining
3 probationary status, including laboratory costs when
4 laboratory testing of biological fluids are included as a
5 condition of probation."

6 Section 14. Section 61-6-31 NMSA 1978 (being Laws 1989,
7 Chapter 269, Section 27, as amended) is amended to read:

8 "61-6-31. DISPOSITION OF FUNDS--NEW MEXICO MEDICAL
9 BOARD FUND CREATED--METHOD OF PAYMENTS.--

10 A. There is created the "New Mexico medical board
11 fund".

12 B. All funds received by the board and money
13 collected under the Medical Practice Act, the Physician
14 Assistant Act, the Anesthesiologist Assistants Act, the
15 Polysomnography Practice Act and the Impaired Health Care
16 Provider Act shall be deposited with the state treasurer who
17 shall place the same to the credit of the New Mexico medical
18 board fund.

19 C. All payments out of the fund shall be made on
20 vouchers issued and signed by the secretary-treasurer of the
21 board or the designee of the secretary-treasurer upon
22 warrants drawn by the department of finance and
23 administration in accordance with the budget approved by that
24 department.

25 D. All amounts in the New Mexico medical board

1 fund shall be subject to the order of the board and shall be
2 used only for the purpose of meeting necessary expenses
3 incurred in:

4 (1) the performance of the provisions of the
5 Medical Practice Act, the Physician Assistant Act, the
6 Anesthesiologist Assistants Act, the Polysomnography Practice
7 Act and the Impaired Health Care Provider Act and the duties
8 and powers imposed by those acts; and

9 (2) the promotion of medical education and
10 standards in this state within the budgetary limits.

11 E. All funds that may have accumulated to the
12 credit of the board under any previous law shall be
13 transferred to the New Mexico medical board fund and shall
14 continue to be available for use by the board in accordance
15 with the provisions of the Medical Practice Act, the
16 Physician Assistant Act, the Anesthesiologist Assistants Act,
17 the Polysomnography Practice Act and the Impaired Health Care
18 Provider Act. All money unused at the end of the fiscal year
19 shall not revert, but shall remain in the fund for use in
20 accordance with the provisions of the Medical Practice Act,
21 the Physician Assistant Act, the Anesthesiologist Assistants
22 Act, the Polysomnography Practice Act and the Impaired Health
23 Care Provider Act."

24 Section 15. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2008. _____